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ABSTRACT

The high incidence of divorce today has surfaced the emotional/legal issues involved in the divorce process. Mental health clinicians recognize the severe emotional trauma which divorced couples experience. The interdependency of the marital relationship is severed and each member must face that loss. A continuing relationship is often required with the involvement of children, but divorcing couples frequently become stuck in the pain of the separation and do not know how to relate in their new divorced status. The advocacy position of many lawyers tends to reinforce the conflict between the couple, and results in exorbitant legal fees. Therapists and lawyers can work as a team to help make the divorce transition less expensive emotionally and financially. The counselor helps the couple communicate effectively by differentiating the emotional from the legal issues, while the lawyer acts as an arbitrator in the negotiation of the divorce settlement. Such a model is presented. (Author)

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A LAWYER/THERAPIST TEAM APPROACH TO DIVORCE

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The high incidence of divorce in recent years has created a strong need to re-examine the interplay between clinicians and lawyers working with the divorce process. The impending termination of an intimate relationship is often accompanied by considerable emotional pain and anger for the divorcing couple. At the very height of this painful situation the divorcing couple is frequently forced to determine property, custody and support rights in a legal framework which is ill-equipped to ameliorate the emotionality or hostility. As a consequence, divorce as it too often occurs, produces unnecessary litigation and destruction of relationships. (Davis, 1977) Many of these pitfalls can be avoided if a therapist works in concert with a lawyer so that the couple can communicate directly in negotiating their marital dissolution and establishing a "divorce relationship".

Presently, both lawyers and mental health clinicians view their roles as sequential, to-wit: when the couple reaches a divorce decision with the therapist, the couple is then referred to a lawyer or lawyers. The role of the therapist is typically terminated except for divorce adjustment counseling with individual members of the family or testimony in contested divorce proceedings.

Additionally, lawyers and mental health clinicians often view divorce as a negative resolution. Mental health clinicians have traditionally focused on marital reconstruction instead of termination and seem to have a professional bias in favor of salvaging the marriage rather than the relationship. (Framo, 1975).

The legal profession has not demonstrated any inclination to limit the contested aspect of divorce proceedings in which greed and desire for revenge fuel a war of possessions that provide satisfaction and fulfillment only to the spouse who is the victor in court. This dynamic has been aptly described as follows:

> In separation and divorce, where the real coin of the realm is anger, pain, vengefulness and hate, money serves as the symbol for everything that went wrong with the marriage. It becomes the socially sanctioned weapon with which each adversary tries to beat down his opponent. It can be wielded mercilessly with relentless fury in moral righteousness, with no shred of guilt. (Rubin, 1976).

The tendency toward contested divorce is advanced by the code of ethics which has been assailed as being more concerned with preservation of the legal profession than with protection of the rights of clients. In the area of domestic relations, this ethical code has produced the following view of the client:

> ....in order for the attorney to do a good job, he must have such control over the client that he will do as the lawyer dictates. James C. Wallace III, FLORIDA FAMILY LAW , §§ 16.1 The Florida Bar CLE 1972.

This view of the client when coupled with the tendency for fees in divorce cases to increase in direct proportion to the couple's inability to resolve conflicts, leads an observable segment of the legal profession to encourage litigation and in some reprehensible cases to knowingly cause conflicts between the parties.

The inability of clinicians and lawyers to work constructively together has led one therapist to write:

> In divorce therapy I not only try to assist couples and children with the disengagement process but help them work out arrangements on such practical

> matters as division of property, child custody, visitation rights and support--- because in a therapeutic atmosphere some reason can prevail, whereas when lawyers get into the picture it can escalate and get out of hand. I try to keep lawyers out of the process until the very end, but rarely do these efforts succeed. (Framo, 1975).

Although such an approach seeks to avoid the horrors of contested divorce proceedings, it forces a couple to make decisions without knowledge or counsel about the legal options, tax ramifications, and general standards of fairness in the community. Achieving a therapeutic milieu by excluding legal counsel is a risk in that decisions reached with the therapist may not protect the legal rights of the client. In any event, such decisions are likely to be beneficial to both parties if a lawyer is available to counsel the couple within the therapeutic setting.

The roles of clinician and lawyer can be synergistic in the divorce process. Utilizing a team approach, emotional issues can be differentiated from legal issues. The lawyer can provide legal advice while the therapist identifies emotional obstacles and helps maintain clarity and

direction. Emphasis is placed on direct communication and negotiation between spouses with the lawyer and therapist acting as arbitrator and facilitator. The benefits of enabling a couple to communicate directly during the divorce process are manifold: lawyer created conflicts are eliminated; direct expression of anger is possible without resorting to vicarious courtroom battles between lawyers which are expensive and emotionally unsatisfying; couples can have mutual input into their agreements instead of risking resolutions imposed by courts; creative planning for custody and property distribution is possible; and most important, communication is not terminated.

The legal system as presently constituted does nothing to encourage a divorce relationship. The lawyer/therapist team, creates a context where both the legal and therapeutic aspects of divorce can be explored and clarified. The specific goals of these sessions are the following:

1. Develop communication channels for problem-solving.

2. Negotiate separation/divorce settlements, i.e., property, support, custody, without resorting to litigation.

3. Identify personal concerns of spouses so they do not interfere with legal negotiations.

4. Guide the couple in severing the old and building a new relationship.

5. Prepare each spouse for experiences which will occur during the divorce transition.

The implementation of these goals occurs through four developmental stages. The stages are engagement, assessment and direction, negotiation and education. Each stage provides a foundation for the subsequent stage.

STAGES

ENGAGEMENT

Motivating divorcing couples towards involvement in this new approach is the first step. Usually one spouse contacts the lawyer or therapist by phone and expresses the desire ot obtain a divorce. The couple is presented with various reasons for participating which include: (1) maintaining a positive divorced relationship; (2) minimizing financial output; and (3) negotiating legal settlement within a supportive milieu. The role of the lawyer as arbitrator is defined and his ethical obligation to refrain from representing either party is emphasized (Revised Opinion 71-45 Professional Ethic Committee, Florida Bar). The role of the therapist is defined as facilitator in order to help the couple to clearly communicate both individual and relationship issues.

If interest in this approach is expressed, both parties are encouraged to participate in the initial session. When one spouse is against participating, feelings behind this resistance are clarified. The session can then be considered to be a forum in which these feelings can be communicated with the assistance of the professional team.

Assessment and Direction

Once engaged by phone, the couple meets with the lawyer/therapist team for one or two sessions. Initially, the relationship is assessed to determine the best direction for that particular couple. The couple talks with each other about their relationship concerns and individual goals, while the therapist facilitates clear and honest communication. Similarities and differences concerning perceptions and goals are identified and clarified by the therapist. Often couples feel frustrated in their attempts to resolve marital problems and consider divorce to be a way to allay these frustrations. The threat of divorce tends to force the couple to place priority on changes in the relationship. Many times couples have allowed their marital problems to snowball and the danger of divorce provides an opportunity to communicate their relationship

concerns. Determining the direction for change in their relationship is based on individual needs. One spouse may want to salvage the marriage while the other spouse wants it ended. The spouse who wants to reconcile often feels helpless and a victim of the other spouse's decision. Legal action may be used as a weapon to express this powerlessness and hurt.

The Lawyer/Therapist team helps the couple clarify individual feelings and differentiate them from legal issues. The couple is encouraged to discuss their needs with each other and they receive feedback if their needs seem to reflect reconciliation, separation or divorce. Frequently, couples need more time to discuss their marital concerns to determine what is the best way to resolve the difficulties. In these cases, the therapist will meet with the couple for short-term counseling (5-10 sessions) to help them reassess their relationship.

Negotiation

If legal separation or divorce is the direction in which the couple wants to proceed, then one or two sessions involve negotiation of the separation or divorce settlements. Issues such as property, support and custody are discussed separately for the purpose of providing a clear structure

for negotiation. The lawyer focuses on the specific details of the settlement while the therapist focuses on how the couple negotiates these issues. This type of discussion often triggers considerable emotionality concerning past marital experiences. Couples seem to experience extreme mood changes and it is important that decisions not be made impulsively. There are times that one spouse may express intense anger toward the other spouse, lawyer or therapist. This expression is often an indication of the confusion and internal pain experienced during this time. The negotiation discussion is probably most difficult for the couple for they confront the painful reality of their marital dissolution. It is crucial for the lawyer/therapist team to provide empathy and acceptance at this time, yet maintain the focus of negotiation. Personal concerns are identified in order to offer understanding and to separate them from the legal transactions. If necessary, these concerns can be explored in depth during subsequent sessions with the therapist. The lawyer/therapist team supports and guides the couple through the negotiation process. They help the couple to learn to talk with each other and thereby help to build a foundation for future communications. The focus of the negotiation process is on compromise. Individual positions

are discussed and resolutions are obtained by mutual give and take. The settlement is then drafted by the lawyer who handles the court procedures.

Education

Preparing the couple for concerns which may develop in their future relationship is the objective of the educational stage. Possible pitfalls in communication during the divorce transition are predicted, and specific ways in which the couple may deal with them are discussed. Concerns that their children may have regarding the separation/divorce and ways of handling these concerns are suggested by the therapist. The therapist may meet with the divorcing couple and their children to help them discuss the concerns with one another. Community resources are identified in order to provide further support. A list of relevant books and articles about divorce is offered to each of the divorcing members to provide them with a cognitive framework for understanding their personal experiences during this transition.

CASE EXAMPLE

Linda called the lawyer requesting that he represent her in a divorce from her husband. The lawyer explained the lawyer/therapist team approach he used in his divorce cases. He explained his role as arbitrator and the therapist's

role as divorce counselor. Linda was informed that her husband would be requested to participate in the initial session for the purpose of discussing the possibility of divorce. The lawyer emphasized that this approach was aimed toward a non-contested divorce. Linda agreed to talk with her husband and arranged an appointment with the lawyer/therapist team. The therapist called the couple to reconfirm the appointment and Johnathan angrily said he knew nothing about a divorce. However, he agreed to participate in the first session to discuss with his wife their marital concerns.

The initial session with the lawyer/therapist team focused on assessment of the relationship. Jonathan was shocked about Linda's desire for a divorce. He said he was not aware of the severity of their marital difficulties. He hoped to try to improve their relationship rather than dissolve it. He felt helpless around Linda's action to initiate a divorce. While talking with each other about their marital concerns, it was evident that Linda and Jonathan had not previously communicated their feelings. Linda agreed to the need for more discussion with Jonathan in counseling before determining if divorce was the best way to resolve their marital problems. Yet, she expressed that their problems may be too severe to salvage the marriage. Jonathan said he would try anything to maintain their marital

relationship. They agreed to have five counseling sessions to discuss their concerns in more depth. The counseling sessions involved meeting with the therapist as a couple and individually. The couple sessions focused on communicating relationship concerns, while the individual sessions focused on individual needs and expectations. During the course of counseling, it was evident that Linda was moving away from the marriage. She felt she wanted to develop individually and that was not possible in her marital relationship. Jonathan began to accept Linda's distance and realized that he could not make her want the marriage.

A second session occurred with the lawyer/therapist team to discuss a direction for their marriage. Both Jonathan and Linda felt more certain that divorce was the most appropriate action to take. One session was spent negotiating the settlement issues such as property, custody and support. The lawyer acted as an arbitrator and provided information concerning legal ramifications of particular decisions. When anger was expressed or feelings withheld, the therapist clarified the personal issues and helped the couple communicate clearly.

The custody of their child was a major concern for

Jonathan. He wanted to be assured of his fathering input. Clear guidelines around payment responsibilities, visitation and child management were discussed. The emphasis was placed on compromise, particularly when they disagreed about the actual time Jonathan could spend with their son.

Pitfalls in their communication were discussed. Linda's tendency to withhold feelings and then be resentful was identified. Jonathan's hurt expressed by bickering over minute monetary differences was also identified. The need for them to be aware of these patterns in future communications was emphasized. Specific issues such as Jonathan moving out of the house and what to say to their son about their divorce was also discussed. The therapist suggested that each have one more individual counseling session to support and clarify the emotional transition from separation to building individual worlds. A follow-up session was scheduled for two months to focus on the adjustments they would experience in their new divorce relationship.

THE TEAM RELATIONSHIP

As in any team approach, the relationship between the team members needs to be continually examined. Personal

philosophies and expectations of both professionals must be explored. Consequences of particular styles and roles should be recognized and discussed. These types of discussions can occur prior to, during and following the counseling sessions. Communications with the couple should generally be kept in the actual sessions so individual team members are not placed in the middle of the couple's struggles. Since the divorcing couple tends to be quite confused and anxious, it is essential that communication between therapist and lawyer be clear so that they can work effectively.

The emotionality experienced by the couple can also be experienced by the team members. Issues around separation, death and aloneness can often trigger personal identification by the team members. It is crucial that they recognize and separate their individual feelings from those of the couple's. When extreme anger or hurt is expressed the team members must be able to offer empathy, clarity and direction to the couple without involving their personal concerns.

PROFESSIONAL REFORM

During the past half century behaviorial science has developed techniques for improved communication and

emotional growth. These concepts did not exisc during the birth of civil divorce laws which were based upon "guilt", "cruelty" and "adultery". Recent reforms of divorce law focus upon removing recrimination from the proceedings, but fail to incorporate the therapeutic techniques. These reforms, only make the severance less distasteful and economically realistic. They ignore the potential for the divorce to be a period of positive reassessment of the relationship.

For the divorce process to become truly humane, therapeutic principles and techniques should be integrated into the legal proceedings. The Lawyer/Therapist Team Approach described here is only one alternative to the archaic and ritualized demarcation between the professions. Other approaches should be generated and discussed as part of the complete reassessment needed.

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